

**ASSEMBLY BILL**

**No. 943**

**Introduced by Assembly Member Chavez**

February 20, 2003

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An act to amend Section 12640.04 of the Insurance Code, relating to mortgage guaranty insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 943, as introduced, Chavez. Mortgage guaranty insurance: contingency reserve.

Existing law requires each mortgage guaranty insurer to establish a contingency reserve, and requires an annual contribution to the reserve in a specified amount. Existing law permits the insurer to make withdrawals in any given year to the extent by which incurred losses exceed 35% of earned premium, or as otherwise permitted by the commissioner.

This bill would require a quarterly contribution to the contingency reserve and would change the way the required contributions are calculated, as specified. It would require the commissioner's approval to make withdrawals from the reserve when incurred losses and loss expenses exceed 35% of the net earned premium.

The bill would also allow a mortgage guaranty insurer, with the commissioner's approval, to withdraw from the contingency reserve any amounts in excess of the policyholders surplus, as described. It would authorize the commissioner to consider certain records and conditions in reviewing a request for withdrawal.

The bill would specify the way in which releases and withdrawals from the contingency reserve are to be accounted for, and the order in

which additions, releases, and withdrawals are to be considered in developing the reserve.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12640.04 of the Insurance Code is  
2 amended to read:

3 12640.04. (a) In addition to the paid-in capital and surplus  
4 provided in Section 12640.03, each mortgage guaranty insurer  
5 shall establish a contingency reserve after establishment of the  
6 unearned premium reserve. There shall be ~~an annual~~ *a quarterly*  
7 contribution to the contingency reserve which in the aggregate  
8 shall be the greater of either 50 percent of the *net* earned premium  
9 *for the prior 12 month period* or the policyholders surplus required  
10 to be established under Section 12640.05 divided by 10. ~~The~~  
11 ~~annual~~

12 (b) *The contributions to the contingency reserve made during*  
13 *each calendar year shall be maintained for a period of 120 months;*  
14 ~~except that withdrawals may be made by the insurer in any given~~  
15 ~~year to the extent by which incurred losses exceed 35 percent of~~  
16 ~~earned premium or as otherwise permitted by the commissioner.~~  
17 *That portion of the contingency reserve established and*  
18 *maintained for more than 120 months shall be released and shall*  
19 *no longer constitute part of the contingency reserve.*

20 (c) *With the approval of the commissioner, withdrawals may be*  
21 *made from the contingency reserve when incurred losses and*  
22 *incurred loss expenses exceed 35 percent of the net earned*  
23 *premium. Provisional withdrawals may be made on a quarterly*  
24 *basis from the contingency reserve in an amount not to exceed 75*  
25 *percent of the withdrawal calculated in accordance with this*  
26 *subdivision.*

27 (d) *With the approval of the commissioner, a mortgage*  
28 *guaranty insurer may withdraw from the contingency reserve any*  
29 *amounts which are in excess of the policyholders surplus required*  
30 *to be established under Section 12640.05 as indicated on the most*  
31 *recent annual statement filed pursuant to Section 923. In reviewing*  
32 *a request for withdrawal, the commissioner may consider those*  
33 *records that may be necessary to evaluate the request, including,*

1 *but not limited to, records relating to loss development and trends.*  
2 *If any portion of the contingency reserve for which withdrawal is*  
3 *requested is maintained by a reinsurer, the commissioner may also*  
4 *consider the financial condition of the reinsurer. If any portion of*  
5 *the contingency reserve for which withdrawal is requested is*  
6 *maintained in a segregated account or segregated trust and*  
7 *withdrawal would result in funds being removed from the*  
8 *segregated account or segregated trust, the commissioner may*  
9 *also consider the financial condition of the reinsurer.*

10 *(e) Releases and withdrawals from the contingency reserve*  
11 *shall be accounted for on a first-in-first-out basis.*

12 *(f) The calculations to develop the contingency reserve shall be*  
13 *made in the following sequence:*

14 *(1) The additions required by subdivision (a).*

15 *(2) The releases required by subdivision (b).*

16 *(3) The withdrawals permitted by subdivision (c).*

17 *(4) The withdrawals permitted by subdivision (d).*

18 *(g) The commissioner's review of a request for withdrawal*  
19 *under subdivision (d) shall be conducted pursuant to his or her*  
20 *examination authority under Section 730 and at the expense of the*  
21 *insurer pursuant to Section 736.*

